

NO. 83-1463

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

MIRIAM BILLINGS LEDESMA,
Petitioner,

v.

STATE OF GEORGIA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTIONS PRESENTED

1.

Whether this Court should grant a writ of certiorari to examine the lawful seizure of evidence pursuant to a valid state search warrant?

2.

Whether this Court should grant a writ of certiorari to examine an alleged violation of Georgia state law, which the Georgia Supreme Court decided purely on adequate and independent state grounds?

3.

Whether this Court should grant a writ of certiorari to examine the Petitioner's opportunity to litigate every ruling on every motion to suppress in the instant case where the

1.

record shows such opportunity was provided?

4.

Whether this Court should grant a writ of certiorari to examine the identical issues previously submitted to this Court, and where the petition for the writ of certiorari was denied, in Ledesma v. State of Georgia, ____ U.S. ____ (Case No. 83-755, decided Jan. 16, 1984), challenging the Petitioner's lawful arrest and the valid search of Petitioner's person and automobile?

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PART ONE

STATEMENT OF THE CASE

The Petitioner, Miriam Billings Ledesma, was convicted, along with Wesley Merritt, of conspiracy to sell cocaine in violation of the Georgia Controlled Substances Act.

Petitioner's co-defendants, Wesley Freeman and Joseph Downing, testified against Petitioner and Merritt at trial.

Petitioner's convictions and sentences were affirmed by the Supreme Court of Georgia at Ledesma v. State, 251 Ga. 885, ___ S.E.2d ___ (1984).

Petitioner now seeks a writ of certiorari from the affirmance of her convictions and sentences by the Supreme Court of Georgia.

Petitioner had previously been convicted of a violation of the Georgia Controlled Substances Act and possession of a firearm by a convicted felon, and said convictions and sentences affirmed at Ledesma v. State, 251 Ga. 487, 306 S.E.2d 629 (1983), cert. denied, ___ U.S. ___ (Case No. 83-755, decided Jan. 16, 1984).

Further facts may be developed herein as necessary for a more thorough illumination of the issues presented to this Court for resolution.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

A. EVIDENCE PRESENTED
AGAINST THE PETITIONER
AT HER TRIAL WAS
LAWFULLY SEIZED PURSUANT
TO A VALID SEARCH
WARRANT.

Petitioner alleges that evidence presented against her at trial was unlawfully seized because police authorities exceeded the scope of search warrants issued against the Petitioner. Respondent submits that all evidence seized and introduced against the Petitioner was lawfully seized pursuant to valid search warrants and Petitioner presents no

substantial federal issue herein for review by this Court.

In its review of the instant case, the Supreme Court of determined that evidence which had been seized pursuant to the challenged search warrants was properly seized under O.C.G.A. § 17-5-21; Ga. Code Ann. § 27-303. Ledesma v. State, 251 Ga. at 890. (See Appendix A for text of statute). As said statute is fully in accord with the Fourth Amendment standards for search and seizure, the Supreme Court of Georgia properly concluded that no Fourth Amendment violation was presented in the instant case.

The Fourth Amendment guarantees a person's right against unreasonable searches and seizures and that no

search warrants shall issue except after a showing of probable cause, supported by an oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. amend. IV. This requirement is designed to prevent general searches throughout a person's belongings. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971).

However, this Court has recognized that effective investigation of complex crimes may require the assembly of a "paper puzzle" from a large number of seemingly innocuous pieces of individual evidence. United States v. Wuaheneux, 683 F.2d 1343, 1349 (11th Cir. 1982), citing, Andersen v. Maryland, 427 U.S. 463,

481 n. 10 (1976). "The complexity of an illegal scheme may not be used as a shield to avoid detection when the State has demonstrated probable cause to believe that a crime has been committed and probable cause to believe that evidence of this crime is in the suspect's possession." Id. quoting, Andresen v. Maryland, supra. See also, United States v. Jacob, 657 F.2d 49, 52 (4th Cir. 1981), cert. denied, ___ U.S. ___, 102 S.Ct. 1435 (1982); United States v. Abrams, 615 F.2d 541, 548 (1st Cir. 1980) (Campbell, J., concurring). "It is universally recognized that the particularity requirement must be applied with a practical margin of flexibility, depending on the type of property to be seized, and that a

description of property will be acceptable if it is as specific as the circumstances and nature of activity under investigation permit." Id.

In the instant case, warrants were issued for the search of Wes-Mer Chemical Co. in which Petitioner and co-defendant Merritt were corporate officers. Ledesma v. State, 251 Ga. at 886. The search of the chemical company disclosed substantial drug paraphernalia and numerous plastic bags containing cocaine residue. Id. In Petitioner's desk, police found a drug testing apparatus and ledgers recounting drug transactions. Id. Additionally, two desk calendars recounting drug transactions, the name of a drug courier, deposit slips for Wes-Mer Chemical Co., a business

license of Wes-Mer Chemical Co., and a contract between a third party and Wes-Mer Chemical Co. were also seized. Id. at 890. Both the business license and the contract show that Merritt was a corporate officer in Wes-Mer. Id. As all the materials seized were evidence of the commission of a crime, and therefore within the scope of the warrants issued and a valid police search there was no violation of either Georgia law or the Fourth Amendment. The Supreme Court of Georgia was correct in its determination regarding these materials, and its decision does not present any issue for review by this Court.

Petitioner also attempts to challenge the constitutionality of

O.C.G.A. § 16-14-7(f); Ga. Code Ann. § 26-3405, known as the Georgia Racketeer Influenced and Corrupt Organizations Act. (RICO). (See Appendix B). However, Petitioner concedes that the instant case was not prosecuted under the RICO statute. (See Petitioner's petition at p. 28). Additionally, the Supreme Court of Georgia noted that Petitioner conceded that the materials challenged could have been seized under the Georgia RICO statute. Ledesma v. State, 251 Ga. at 891. The Supreme Court of Georgia did not specifically address the applicability of the Georgia RICO statute to the instant case, but instead dismissed the Petitioner's claims regarding the constitutionality of the statute in dicta, referring to

its decision in Waller v. State, 251 Ga. 124, 303 S.E.2d 437 (1983), cert. granted, ___ U.S. ___ (Case Nos. 83-321, 83-322, November 7, 1983).

While Waller v. State, supra, dealt with specific prosecutions under the Georgia RICO statute, as well as extensive searches and seizures, the instant case deals solely with violations of the Georgia Controlled Substances Act and searches limited solely to that issue. The instant case does not present the exact same issue as presented in Waller, nor did the Supreme Court of Georgia specifically address the constitutionality of the challenged statute in the instant case.

Therefore, Respondent asserts that the Supreme Court of Georgia

determined the validity of the searches challenged herein under an adequate and independent state ground, by interpreting O.C.G.A. § 17-5-21; Ga. Code Ann. § 27-303. In accord with this statutory provision, the Supreme Court of Georgia also determined that no Fourth Amendment violations were presented by the Petitioner's claims.

Respondent also asserts that the instant case is an inappropriate case for consideration of the constitutionality of the Georgia RICO statute since said statute was not a part of the prosecution of the Petitioner nor was it the basis of the searches involved. The Georgia RICO statute was addressed solely in answer to one of the Petitioner's contentions

on direct appeal, and dealt with by the Supreme Court of Georgia only indirectly. The instant case is not similar and does not present the same issues as Waller v. State, supra wherein this Court has granted certiorari to review two issues, one of which is the Georgia RICO statute.

For all the above and foregoing reasons, Respondent respectfully submits that the Supreme Court of Georgia was correct in its interpretation of the Petitioner's constitutional rights and that the Petitioner's allegations presented herein do not raise any issue for review by this Court.

B. BASED ON STATE
 EVIDENTIARY AND
 PROCEDURAL LAW, THE
 SUPREME COURT OF GEORGIA
 PROPERLY REJECTED THE
 PETITIONER'S CONTENTION
 THAT THE SEARCH WARRANTS
 IN THE INSTANT CASE WERE
 NOT SUPPORTED BY
 PROBABLE CAUSE.

Petitioner contends that all evidence seized under all search warrants in the instant case should have been suppressed because of the possibility that the search warrants were issued in partial reliance upon unauthorized wiretaps. Respondent submits that the Supreme Court of Georgia properly rejected this

argument, basing its decision on state procedural and evidentiary grounds. Additionally, Respondent asserts that there was sufficient probable cause demonstrated to support the issuance of the search warrants.

The trial court in the instant case held an extensive motion to suppress hearing regarding the warrants issued against the Petitioner, and her co-defendants. (T. 166-277). At said hearing, the officers involved in the investigation of the Petitioner as well as the judge who issued the search warrants, testified regarding the events leading up to the various searches and wiretaps. Additionally, the state submitted into evidence the various affidavits, court orders, and returns

and reports regarding the wiretaps and warrants in question. The trial court concluded that there was probable cause to support the various searches conducted in the instant case, and that evidence from three wiretaps was also admissible. Regarding another two wiretaps, the state agreed not to submit any evidence regarding the contents of these wiretaps, and therefore, no issue was presented to the trial court regarding the admissibility of any evidence gathered in those two wiretaps.

During direct review of this issue, the Supreme Court of Georgia held that the Petitioner had failed to carry her burden of proof in showing that the trial court was clearly erroneous in its determinations.

regarding the searches and wiretaps. Ledesma v. State, 251 Ga. at 889, citing, Miller Grading Contractors v. Georgia Federal Savings and Loan Association, 247 Ga. 730, 279 S.E.2d 442 (1981); Watson v. Stynchcombe, 240 Ga. 169, 240 S.E.2d 56 (1977).

Additionally, the Supreme Court of Georgia rejected Petitioner's argument that O.C.G.A. § 16-11-64(b)(8); Ga. Code Ann. § 26-3004 had been violated by the state in that the electronic surveillance had not been properly sealed. Id. The Supreme Court of Georgia determined that, as no evidence had been admitted from the allegedly unsealed wiretaps, no issue was presented for review by that Court because, had the statute been actually violated, the remedy which would have

been imposed was the exclusion of the evidence. Id. Therefore, the court found no violation of O.C.G.A.

§ 16-11-64; Ga. Code Ann. § 26-3004.

Respondent asserts that this decision by the Supreme Court of Georgia was based on an adequate and independent non-federal or state ground, thereby presenting no issue for review by this Court. This Court has consistently adhered to a self-imposed principle that it will not review a state court judgment based upon an adequate and independent non-federal or state ground, even though a federal question may be involved and perhaps wrongly decided. Berea College v. Kentucky, 211 U.S. 45, 53 (1908); Fox Film Corp. v. Muller, 296 U.S. 207 (1935). In

explanation of this policy, this Court has said:

The reason is so obvious that it has been rarely thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, and not

revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its use of federal laws, our review could amount to nothing more than an advisory opinion.

Herb v. Pitcairn, 324 U.S. 117, 125-126 (1945); Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562, 566 (1977).

Petitioner is attempting to challenge the Supreme Court of Georgia's ruling that the trial court had not been shown to be clearly

erroneous in its decision.

Additionally, Petitioner seeks redress from this Court from alleged violations of O.C.G.A. § 16-11-64; Ga. Code Ann. § 26-3004, regarding a state requirement that wiretaps be properly sealed and published. Neither of these issues raised by the Petitioner present substantial federal questions for review by this Court.

Assuming arguendo that a federal issue is deemed raised, the Supreme Court of Georgia properly determined that no constitutional or federal violation occurred in conducting the searches in question. In the instant case, evidence was presented to the trial court showing that police officers involved in the investigation of the Petitioner sought search

Warrants and wiretaps regarding the
Petitioner and other co-defendants
based on a continuing police
investigation, reliable information
from a confidential informant and
information from other wiretaps.
Petitioner makes no challenge to the
information provided to the issuing
magistrate from all of these sources,
except for two initial wiretaps.
However, as the Supreme Court of
Georgia recognized, information from
the two questioned wiretaps was not
presented into evidence at trial.

Respondent asserts that all of the
information presented to the issuing
magistrate, from the various sources
involved provided sufficient probable
cause under the standards of the
Fourth Amendment to permit the

searches challenged herein. There is no showing that all of the searches involved in the instant case are in some way "tainted" by the existence of the two wiretaps, the contents of which were not even presented at the Petitioner's trial. All of the searches in the instant case did not derive from these two challenged wiretaps, but instead, were the products of a wealth of information from various sources. Therefore, there is no showing that the subsequent evidence acquired from searches, such as the drugs and drug paraphernalia acquired from the Wes-Mer Chemical Co., where the "fruits of a poisonous tree" which would warrant their exclusion from evidence at the Petitioner's trial.

Therefore, for all the above and foregoing reasons, Respondent asserts that Petitioner has failed to present any substantive issue of federal law which would warrant a review by this Court.

C. THE SUPREME COURT OF
GEORGIA WAS NOT
PRESENTED WITH THE ISSUE
OF WHETHER OR NOT THE
PETITIONER HAD BEEN
AFFORDED A FULL AND FAIR
OPPORTUNITY TO LITIGATE
HER MOTIONS TO SUPPRESS.

Petitioner contends that she was denied a full and fair opportunity to litigate her claims regarding the motions to suppress evidence in the trial court. Respondent submits that

this issue was not presented to the Supreme Court of Georgia on direct appeal, and presents no substantial issue of federal or constitutional law for this Court to review.

It is a well-established principle of law that this Court will not decide federal constitutional issues raised for the first time on review of state court decisions. Cardinale v. Louisiana, 394 U.S. 437, 438 (1969). Such questions which were not raised below are very likely to have an inadequate record, since it was certainly not compiled with those questions in mind and in the federal system it is very important that the state courts be given the first opportunity to consider the application of state statutes in light

of any constitutional challenge. Id.
at 439.

In the instant case, Petitioner claims that she was denied a full and fair opportunity to litigate the issues of her motions to suppress. The Supreme Court of Georgia did not address such an issue in its review of the Petitioner's convictions on direct appeal, and therefore, Respondent avers that said issue is inappropriately presented to this Court.

Respondent also notes that a hearing was held on the suppression of evidence seized in the instant case. (T. 166-277). Testimony of the investigating police officers was presented, as well as the testimony of the judge issuing the search warrants.

Id. All witnesses were subject to cross-examination by Petitioner's counsel, outside of the hearing of the jury. Additionally, the Supreme Court of Georgia noted that at this hearing on the motion to suppress the affidavits used to support the issuance of the wiretaps were presented along with said testimony.

Ledesma v. State, 251 Ga. at 889.

Respondent asserts that this evidence shows the Petitioner was not denied a full and fair opportunity to litigate the motion to suppress issue, and the Petitioner has not been denied any due process rights.

Therefore, for all the above and foregoing reasons, Respondent asserts that Petitioner has failed to present any substantive issue of federal law

which would warrant review by this Court.

D. THE SUPREME COURT OF
GEORGIA'S DECISION,
BASED ON ADEQUATE AND
INDEPENDENT STATE
GROUNDS, WAS CORRECT
REGARDING THE EVIDENCE
SEIZED AS A RESULT OF
THE PETITIONER'S
SEPTEMBER 14, 1982
ARREST.

Petitioner contends her constitutional rights were violated when she was arrested on September 14, 1982 and her person and automobile searched, leading to discovery of incriminating evidence. Respondent asserts that the constitutionality of

Petitioner's arrest has been previously litigated in a separate appeal both to the Supreme Court of Georgia and to this Court, and that the Supreme Court of Georgia in the instant case found no error in the trial court's procedural handling of the admission of this evidence.

Petitioner had been arrested on September 14, 1982, based on a teletype from the State of Missouri stating that she was wanted for violations of the Missouri Controlled Substances Act. At the time of this arrest, the Petitioner and her car were both searched, and incriminating evidence against the Petitioner was discovered. In a prosecution separate from the instant case, Petitioner was convicted of violations of the Georgia

Controlled Substances Act and of possession of a firearm by a convicted felon. See Ledesma v. State, 251 Ga. 487, 306 S.E.2d 629 (1983). Raising the identical issue as raised herein, Petitioner applied to this Court for a writ of certiorari, which was denied on January 16, 1984.

The evidence produced by the September 14, 1982 arrest was also introduced at trial in the instant case. As Petitioner had already had a previous opportunity to fully and fairly litigate this issue, the trial court did not require the state to relitigate this issue, but instead gave the Petitioner the opportunity to produce any further evidence which had not been produced at her first trial. The Supreme Court of Georgia found no

error in either this procedural action or the trial court's refusal to suppress the evidence which resulted from the September 14, 1982 arrest. Ledesma v. State, 251 Ga. at 887-888.

Respondent asserts that this decision by the Supreme Court of Georgia is based on adequate and independent state grounds, i.e., this procedure for the production of evidence was acceptable, and therefore, no federal issue is presented for review by this Court.

Assuming arguendo that this issue is reviewed by this Court on its merits, the Petitioner's constitutional rights were not violated in any way regarding this search. The official teletype from the Missouri police authorities, sent

at the request of Georgia police authorities, provided sufficient probable cause for the Petitioner's arrest because the arresting officers at the time of the Petitioner's arrest had facts and circumstances within their knowledge which they believed were reasonably trustworthy and which were sufficient to warrant a prudent man to believe the Petitioner had committed an offense in the State of Missouri. See Beck v. Ohio, 379 U.S. 89, 91 (1964). See also, Durden v. State, 250 Ga. 325, 326, 297 S.E.2d 237 (1982). At the time of the Petitioner's arrest, Georgia authorities searched the immediate area around the Petitioner, including the passenger compartment of her car, where a weapon was discovered. Such a

search is constitutionally acceptable under the guidelines established by this Court. New York v. Belton, 453 U.S. 454, 560 (1981); Chimel v. California, 395 U.S. 752 (1969).

After Petitioner's arrest, Petitioner's automobile was impounded pursuant to Fulton County, Georgia Standard Operating Procedure No. 23.3(D)(1)(d), taken to the police impound yard, and an inventory search conducted. During this search, a plastic bottle of pills was found in the ashtray of the Petitioner's car, and these pills were later determined to be phentermine, a controlled substances under Georgia law. This inventory search, pursuant to a standard police inventory procedure, is also acceptable under the

guidelines of this Court. South Dakota v. Opperman, 428 U.S. 364 (1976); Chambers v. Maroney, 399 U.S. 42 (1970).

In addition to this evidence, Georgia authorities also discovered a drug ledger and a calculator and tapes, all of which indicated the Petitioner's involvement in violations of the Georgia Controlled Substances Act. As this evidence had been discovered during the lawful search of the Petitioner's automobile, the evidence was properly admitted at trial.

Therefore, for all the above and foregoing reasons, Respondent respectfully submits that the Supreme Court of Georgia was correct in its interpretation of Georgia procedural

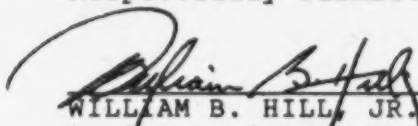
and evidentiary rules, and that none of the Petitioner's constitutional rights have been violated, thereby presenting no issue for review by this Court.

CONCLUSION

This Court should refuse to grant a writ of certiorari to the Supreme Court of Georgia, as it is manifest that there exists no federal question for review by this Court as to the Petitioner's claims and, further, there is no substantial federal question not previously decided by this Court. Additionally, the

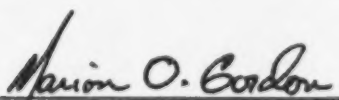
decision sought to be reviewed is
demonstrably in accord with the
applicable decisions of this Court.

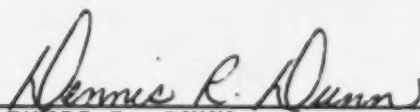
Respectfully submitted,


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APPENDIX A

O.C.G.A. § 17-5-21. Grounds for issuance of search warrant; scope of search pursuant to search warrant.

(a) Upon the written complaint of any officer of this state or its political subdivisions charged with the duty of enforcing the criminal laws under oath or affirmation, which states facts sufficient to show probable cause that a crime is being committed or has been committed and which particularly describes the place or person, or both, to be searched and things to be seized, any judicial officer authorized to hold a court of inquiry to examine into an arrest of an offender against the penal laws, herein referred to as "judicial

officer," may issue a search warrant for the seizure of the following:

- (1) Any instrument, articles, or things, including the private papers of any person, which are designed, intended for use, or which have been used in the commission of the offense in connection with which the warrant is issued;
- (2) Any person who has been kidnapped in violation of the laws of this state, who has been kidnapped in another jurisdiction and is now concealed within this state, or any human fetus or human corpse;
- (3) Stolen or embezzled property;
- (4) Any item substance, object, thing, or matter, the possession of which is unlawful; or

(5) Any item, substance, object, thing, or matter, other than the private papers of any person, which is tangible evidence of the commission of the crime for which probable cause is shown.

(b) When the peace officer is in the process of effecting a lawful search, nothing in this Code section shall be construed to preclude him from discovering or seizing any stolen or embezzled property, any item, substance, object, thing, or matter, the possession of which is unlawful, or any item, substance, object, thing, or matter, other than the private papers of any person, which is tangible evidence of the commission of a crime against the laws of this state.

APPENDIX B

O.C.G.A. 16-4-7. Civil

Remedies-Forfeiture.

(f) Seizure may be effected by a law enforcement officer authorized to enforce [sic] the penal laws of this state prior to the filing of the complaint and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within ten days of the date of seizure, the seizure shall be reported by the officer to the district attorney of the circuit in which the seizure is effected; and the district attorney shall, within a

reasonable time after receiving notice of seizure, file a complaint for forfeiture. The complaint shall state, in addition to the information required in subsection (e) of this Code section, the date and place of seizure.

CERTIFICATE OF SERVICE

I, William B. Hill, Jr., Attorney of Record for the Respondent and a member of the Bar of the Supreme Court of the United States certify that in accordance with the rules of the Supreme Court of the United States I have this day served a true and correct copy of this Brief for the Respondent in opposition upon the Petitioner's attorney by depositing a copy of this brief in the United States mail with proper address and adequate postage to:

J. M. Raffauf
Attorney at Law
1477 Snapfinger Road
Decatur, Georgia 30032

This 27th day of March ~~April~~ 1984.



WILLIAM B. HILL, JR.